

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

YASER ESAM HAMDI,

ESAM FOUAD HAMDI, As Next
Friend of Yaser Esam Hamdi,

Petitioners,

v.

Civil Action No. 2:02cv439

DONALD RUMSFELD,
Secretary of Defense,

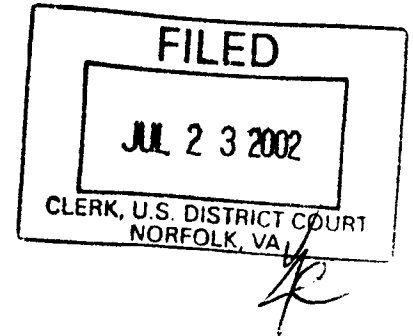
COMMANDER W.R. PAULETTE,
Norfolk Naval Brig,

Respondents.

RESPONDENTS' MOTION TO TERMINATE APPOINTMENT
OF COUNSEL OR, IN THE ALTERNATIVE, TO REQUIRE
COUNSEL TO SHOW CAUSE WHY THE FINANCIAL ELIGIBILITY
REQUIREMENTS OF 18 U.S.C.3006A ARE MET

Respondents Donald Rumsfeld, Secretary of Defense, and Commander W.R. Paulette move the Court for an Order terminating the appointment of the Federal Public Defender as counsel in this 28 U.S.C. § 2241 proceeding, on the grounds of financial ineligibility to receive taxpayer-funded counsel under the Criminal Justice Act, 18 U.S.C. § 3006A.¹ In support of their

¹ On July 18, 2002, the District Court ordered respondents to file by July 23, 2002 any contemplated motion to terminate the appointment of the Federal Public Defender as counsel for petitioners. Because the Fourth Circuit has yet to issue its mandate, jurisdiction over this matter remains in the Fourth Circuit, and respondents therefore continue to object to this Court's improper effort to exercise jurisdiction. See United States v. Montgomery, 262 F.3d 233, 239 (4th Cir.), cert. denied, 122 S. Ct. 526 (2001); see also Kusay v. United States, 62 F.3d 192 (7th Cir. 1995). The Fourth Circuit's July 12, 2002 decision in this case deals directly with the June 11 Order pursuant to which this Court appointed counsel and the appropriate procedures to be followed in this case, and specifically leaves "for remand" the taxpayer-funded counsel issue that is the subject of this motion. See Hamdi v. Rumsfeld, 4th Cir. No. 02-6895 (Hamdi II), slip. op.

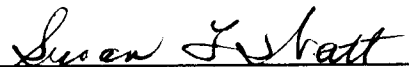


Motion, respondents adopt and incorporate by reference their Memorandum in Support with attached exhibits.

Respectfully submitted,

Paul J. McNulty
United States Attorney

Paul D. Clement
Deputy Solicitor General
Alice S. Fisher
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By: 
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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Respondents' Motion to Terminate Appointment of Federal Public Defender as Counsel for Petitioners, with three attached exhibits, was served, this 23 day of July, 2002, by fax and by hand delivery addressed to:

Larry W. Shelton
Supervisory Assistant Federal Public Defender
Jeremy C. Kamens
Assistant Federal Public Defender
Office of the Federal Public Defender
150 Boush Street, Suite 403
Norfolk, Virginia 23510

Susan F. Holt